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Committee on the Elimination of Discrimination against Women

Communication No. 57/2013

Decision on admissibility adopted by the Committee at its sixty-fourth session (4-22 July 2016)

Submitted by:	V. (represented by counsel, Niels-Erik Hansen)
Alleged victim:	The author
State party:	Denmark
Date of communication:	6 August 2013 (initial submission)
References:	Transmitted to the State party on 13 August 2013 (not issued in document form)
Date of adoption of decision:	11 July 2016

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Annex

Decision of the Committee on the Elimination of Discrimination against Women under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (sixty-fourth session)

concerning

Communication No. 57/2013*

Submitted by:	V. (represented by counsel, Niels-Erik Hansen)
Alleged victim:	The author
State party:	Denmark
Date of communication:	6 August 2013 (initial submission)

The Committee on the Elimination of Discrimination against Women, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,

Meeting on 11 July 2016,

Adopts the following:

Decision on admissibility

1.1 The author of the communication is V., an Indian national born in 1989, who is at risk of deportation to India because her asylum application in Denmark has been rejected. She claims that her deportation would constitute a violation by Denmark of articles 1, 2 (c) and (d), 3, 12, 15 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women and of the Committee's general recommendations No. 12 (1989) on violence against women and No. 16 (1991) on unpaid women workers in rural and urban family enterprises. The author is represented by counsel. The Convention and the Optional Protocol thereto entered into force for the State party on 21 May 1983 and 22 December 2000, respectively.

1.2 When registering the communication on 13 August 2013, pursuant to article 5 (1) of the Optional Protocol and rule 63 of its rules of procedure, the Committee, acting through its Working Group on Communications under the Optional Protocol, requested the State party not to deport the author pending the examination of her case. On 14 October 2013, the State party informed the Committee that it had stayed her deportation. The State party also requested the Committee to first examine the admissibility of the communication. On 8 January 2014, in compliance with rule 66 of its rules of procedure, the Committee, acting through the Working Group on

* The following members of the Committee took part in the consideration of the present communication: Gladys Acosta Vargas, Bakhita al-Dosari, Nicole Ameline, Magalys Arocha Dominguez, Barbara Bailey, Niklas Bruun, Louiza Chalal, Naéla Gabr, Hilary Gbedemah, Nahla Haidar, Ruth Halperin-Kaddari, Yoko Hayashi, Dalia Leinarte, Lia Nadaraia, Theodora Nwankwo, Pramila Patten, Patricia Schulz and Xiaoqiao Zou.

Communications, decided to examine the admissibility together with the merits of the communication.

Facts as submitted by the author

2.1 The author submits that she is a Christian who lived near Jalandhar, India. She was a hospital receptionist. In 2009, she met a Hindu, R., at her workplace, and they began a relationship. When their families learned about it, however, they tried to stop them from seeing each other. The author was beaten by her family and, in October 2009, her relatives attacked R. After the attack, R. was arrested by the police, even though he had been the victim of the attack. As a result, he left his home town and moved to Jalandhar. However, he was again attacked there by the author's relatives. In 2010, R. left India.

2.2 In 2011, the author's family tried to force her to marry a Christian man. With the assistance of a friend of R., she obtained a visa and arrived in Denmark in April 2012. R. was first in Romania and Italy. He arrived in Denmark in October 2012 and both he and the author applied for asylum there.

2.3 On 12 March 2013, the Danish Immigration Service rejected the author's application and stated that her statements were inconsistent and that, therefore, she lacked credibility. The author appealed against this decision before the Refugee Appeals Board.

2.4 On 19 July 2013, the Refugee Appeals Board rejected the author's appeal. According to the author, the Board explained that it could essentially believe her explanation that she had met R. at work and that they had begun a relationship to which both their families were opposed. She contends that, even if the Danish Immigration Service had found her story not credible, the final decision from the Board appeared to be based on the fact that all five members had agreed that the young couple (Christian/Hindu) was violating the moral norms and gender rules in India by having a relationship without the approval of their families and as a mixed couple. According to the author, the Board was very divided, since one or two members (the exact number is not known because, according to the rules of the Board, it is not possible to obtain information about an individual's vote) would grant her and her boyfriend asylum, given the risk of persecution from their families and the police in India if they returned there. Given that those members held only a minority vote, the reasoning of the majority had prevailed and the author's appeal had been rejected.

2.5 The author adds, however, that the majority members were also in disagreement over the reasoning, with some questioning her credibility concerning the extent of the conflict with her family, while others fully believed her but advised her to live in another part of India. According to the author, she would be at risk of becoming a victim of an "honour" killing, given that she intended to marry, against the will of her family, a Hindu with whom she sought asylum abroad. Her intention to marry was violating gender norms in India that women have to accept the choice of their parents. Furthermore, it was also violating the religious and cultural norms that dictate that a Hindu man and a Christian woman may not marry.

2.6 The author adds that it was further noted in the concluding observations[1] that there was a major problem with regard to victims' access to protection and effective redress, given that perpetrators of such crimes were not prosecuted and punished in India. All information about the situation in India underlined that women were not protected against gender violence and that, even in cases of rape, the authorities lacked the will to conduct an effective investigation and prosecution and impose reparations with due diligence. The author also submitted a copy of a press article regarding a police officer allegedly calling upon the father of a missing girl to commit an "honour" killing, which showed, according to the author, that she could seek no protection from the Indian authorities.

2.7 Lastly, the author explains that, in India, one must report to the local police when registering one's place of residence and have an identity card. Consequently, her family could easily track her with the help of the police, even if she took up residence in another town. In that connection, she reiterates that her friend was located by her family even though he had moved to Jalandhar.

2.8 The author claims that she has exhausted domestic remedies because the decisions by the Board are final and cannot be appealed before a court.

Complaint

3. The author claims that her return to India, where she had already been subjected to gender-based violence by her family, would put her at even greater risk of similar attacks or of killing because she, as a woman, had tarnished the honour of her family, and would constitute a violation by the State party of articles 1, 2 (c) and (d), 3, 12, 15 and 16 of the Convention and of the Committee's general recommendations Nos. 12 and 16.

State party's observations on admissibility

4.1 By a note verbale dated 14 October 2013, the State party challenged the admissibility of the communication. It recalled that the author, an Indian national born in 1989, had entered Denmark on 29 April 2012 on valid travel documents and held a residence permit as an au pair valid until 18 April 2013. Her boyfriend, R., had entered Denmark in August 2012 and applied for asylum on 17 September 2012. The author applied for asylum on 22 September. On 12 March 2013, the Danish Immigration Service refused to grant her asylum. The author submitted an appeal to the Board. In that appeal, of 11 July 2013, her counsel made a primary claim for a residence permit under section 7 (1) or, alternatively, under section 7 (2), of the Aliens Act.[2] In his brief, the counsel stated that, if sent back, the author feared "honour"-related violence or killing because of her relationship with R., who was of another religion and caste. He also stated that the author's family had disapproved of their relationship and had accused R. of kidnapping her. The author allegedly feared persecution because she had defied her own family and had thereby violated the gender and honour codes in India.

[1] The author does not indicate to which concluding observations she refers.

[2] See, among others, the European Convention on Human Rights, art. 3, the International Covenant on Civil and Political Rights, art. 7, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3, and the Convention on the Elimination of All Forms of Discrimination against Women.

4.2 During the proceedings before the Board, the author's asylum application was considered jointly with the application submitted by her boyfriend, given that the author had argued that, if she returned to India, she feared being killed by her own family or the family of R., because she was Christian and her family were followers of the Supreme Akali Party, while R. was Hindu and a follower of the Nationalist Congress Party.

4.3 The author stated to the Board that her relationship with R. had begun in 2009. Her family had tried to make her leave him and had physically assaulted them several times. In 2011, her family had tried to force her into marrying another man. Lastly, she stated that her family had bribed the Indian authorities for the purpose of ending their relationship.

4.4 On 19 July 2013, the Board upheld the refusal of the Danish Immigration Service. A majority of the Board found that the author did not meet the conditions for a residence permit under section 7 of the Aliens Act. The Board accepted her statement that she had met R. at work and that they had begun a relationship of which both families disapproved. The majority of the Board found that, should she return to India, the author would not be at a real risk of persecution falling under section 7 (1) of the Aliens Act or of outrages falling under section 7 (2) of the Act. However, one part of the majority could not accept the author's statement about the scope of the conflict with the families. Those members emphasized that her statement lacked credibility and appeared fabricated for the occasion, that the statement given was partly inconsistent and lacked detail and that, at the Board hearing, the author had not been able to elaborate on her statement about the conflict with her family. They also found it remarkable that she had not left India until 18 months after the peak of the conflict and had applied for asylum in Denmark only after having worked as an au pair for five months. They thus disregarded the author's statement for want of credibility. They found that, regardless of whether she was in such conflict with her own family and the family of R. that she could not take up residence close to her own family, she would be able to take up residence elsewhere in India. Accordingly, this part of the majority voted to uphold the decision of the Service.

4.5 The State party adds that another part of the majority could accept the author's statement about her conflict with her family and found that she was therefore in need of protection falling under section 7 (1) of the Aliens Act. However, those members also found that the author would be able to take up residence elsewhere in India. In that connection, it was emphasized that the conflict was of a private nature and that, on the basis of the specific circumstances and the author's background, she could reasonably be expected to be able to take up residence in large urban areas. The Board therefore upheld the decision of the Danish Immigration Service.

4.6 The State party notes that, on 14 August 2013, in the light of the Committee's request for interim measures, the Board suspended until further notice the time limit for the author and her boyfriend to depart.

4.7 The State party next provides extensive information about the activities and composition of, the proceedings before and the legal value of the decisions of the Board. It is an independent, quasi-judicial body, considered a court as meant in article 39 of Council directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status. Article 39 deals with the right of asylum seekers to have a court or tribunal review a decision taken on

their application. The Board comprises a chair, deputy chairs (the Executive Committee) and other members. The chair and the deputy chairs are judges, while the other members must be attorneys or nominees of the Danish Refugee Council, or serve in the Ministry of Foreign Affairs or the Ministry of Justice. The members of the Board are appointed by the Board's Executive Committee, the judges upon nomination by the Court Administration, the attorneys upon nomination by the Council of the Danish Bar and Law Society, and the other members upon nomination by the Minister of Justice, the Minister for Foreign Affairs and the Danish Refugee Council, respectively.

4.8 Regarding the present case, the State party notes the author's claim that, by expelling her to India, Denmark would violate articles 1, 2 (c) and (d), 3, 12, 15 and 16 of the Convention and the Committee's general recommendations No. 12 and No. 19 (1992) on violence against women, because there she would be in danger of being subjected to gender-based harassment and discrimination or of being killed. In that connection, the author has referred to the fact that she has allegedly been the victim of several violent attacks by her own family and that of her boyfriend, as those families feel that they have been disgraced by the relationship. The author has also submitted that it is not possible for her to seek protection from the Indian authorities.

4.9 The State party believes that the communication is inadmissible because it is manifestly ill-founded and insufficiently substantiated, as provided in article 4 (2) (c) of the Optional Protocol. According to the State party, the author seeks to apply the obligations under the Convention in an extraterritorial manner in her communication. In its decision regarding communication No. 33/2011,[3] the Committee made some general comments concerning the extraterritorial effect of the Convention. In paragraph 8.10 of the decision, which addresses the positive duties of States parties pursuant to article 2 (d) of the Convention, the Committee noted the State party's obligation to protect women from being exposed to a real, personal and foreseeable risk of serious forms of gender-based violence, irrespective of whether such consequences would take place outside the territorial boundaries of the sending State party.

4.10 The State party notes that, according to the Committee, the Convention has extraterritorial effect only when the woman being returned will be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence. It is moreover a requirement that the necessary and foreseeable consequence is that that person's rights under the Convention will be violated in another jurisdiction. The State party believes that this means that acts of States parties that may have an indirect effect on a person's rights under the Convention in other States can entail responsibility for the acting State party (the extraterritorial effect) only under exceptional circumstances in which the person to be returned is at risk of being deprived of the right to life or of being exposed to torture or other inhuman or degrading treatment, as those rights are protected under, among others, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, articles 6 and 7 of the International Covenant on Civil and Political Rights and articles 2 and 3 of the European Convention on Human Rights.

[3] Communication No. 33/2011, *M.N.N. v. Denmark*, decision of inadmissibility adopted on 15 July 2013.

4.11 The State party finds that the author has failed to substantiate the fact that she would be subject to a real, personal and foreseeable risk of persecution and that the necessary and foreseeable consequence of her return is that her rights under the Convention would be violated in India. The assessment of the existence of a real risk must necessarily be a rigorous one and, in the State party's view, it must usually be incumbent on the person invoking the extraterritorial effect of the Convention and its derived protection to provide information and material providing substantial grounds for assuming that such person would be at a real risk of treatment contrary to the Convention were the person returned to a particular country.[4]

4.12 According to the State party, the author's allegations regarding the risk of harassment are in no way substantiated by any prima facie evidence. In support of this view, the State party notes that it appears from the reports of the asylum proceedings before the Danish immigration authorities that the author made vague and inconsistent statements about the timeline of her relationship with R., the conflict with her family and her family's power and political relations, and that she also made inconsistent statements as to who had assaulted her and R., the type of assaults and where and when they had allegedly taken place. One part of the majority of the Board could not accept the author's statement about the scope of the conflict with the families. Those members emphasized that her statement lacked credibility and appeared fabricated for the occasion and, in this connection, referred to the fact that the statement given was partly inconsistent and lacked detail, and that, at the Board hearing, the author had not been able to elaborate on her statement about the conflict with her family. They also found it remarkable that she had not left India until 18 months after the peak of the conflict and that she had entered Denmark legally, holding a residence permit as an au pair, but had applied for asylum in Denmark only after having worked in such a capacity for five months. They therefore found that the author's statement must be disregarded for want of credibility.

4.13 Notwithstanding the problems of credibility, the other part of the majority of the Board gave the author the benefit of the doubt and accepted her statement about the conflict with her family. The State party observes that the author has no basis for stating that this part of the majority was allegedly of the point of view that she would risk being the victim of an "honour" killing if she returned to her home town. It does not appear from the reasoning in the Board's decision that this part of the majority had such a point of view. In addition, the author has no basis for stating that the minority of the Board would grant her and her boyfriend asylum because of the risk of persecution from the families and the police in India upon return. As a matter of fact, the reason why the minority would grant asylum does not appear in the decision.

4.14 The State party adds that the author has no basis either for stating that the final decision from the Board appeared to be based on the fact that all five Board members had agreed that the young couple (Christian/Hindu) was violating the moral norms and gender rules in India by having a relationship without the approval of the families and as a mixed couple. Consequently, the State party contests that the author's statement of facts in her communication to the Committee of 6 August 2013 may be accepted as the facts of the case given that, as stated above, the author

[4] The State party refers in particular to the case of *N.A. v. the United Kingdom*, application No. 25904/07, judgment of 17 July 2008 by the European Court of Human Rights, para. 111.

has made inconsistent statements about several of the factual circumstances during the asylum proceedings, including the circumstances and times of the stated attacks against R., whether he was arrested by the police, the family's attempt to make the author marry another man and the importance of this in her decision to leave India.

4.15 The majority of the Board found that the author could take up residence in another part of India. This is contested by the author, who submits that her family would be able to find out wherever she takes up residence in India.

4.16 The State party adds in that respect that this does not accord with the background information available to it. In that connection, the State party refers to paragraph 3.13.20 of the operational guidance note on the application of internal relocation of women in India published by the Home Office of the United Kingdom of Great Britain and Northern Ireland in May 2013, from which it appears that, for some women in India, relocation will not be unduly harsh, but that this is likely to be the case only where the individual is single, without children to support, able to access safe accommodation and is educated enough to be able to support herself. Some single women may also be able to relocate to live with extended family or friends in other parts of the country. However, where these circumstances do not obtain, internal relocation is likely to be unduly harsh.

4.17 The State party observes that the author is an extremely independent and well-educated woman with 12 years of school attendance and a diploma in information technology. She has had paid work outside her home as a receptionist at a hospital in Punjab, travelled to Europe on her own and worked as an au pair in Denmark for about five months. Moreover, according to her statement to the Danish authorities, she has persistently opposed her family's wish that she stop seeing R. and marry another man.

4.18 Concerning the application of internal relocation in general in India, the State party also refers to paragraphs 2.3.1 to 2.3.8 of the operational guidance note mentioned above, in which it is stated, among other things, that internal relocation can be relevant in both cases of State and non-State agents of persecution, but that, in the main, it is likely to be most relevant in the context of acts of persecution by localized non-State agents. Consequently, the State party finds that internal relocation is a reasonable option for the author and is not unduly harsh.

4.19 The State party submits that the author has given no information substantiating her allegation that her family and that of R. would be able to find them wherever they were in India, and a purely theoretical possibility of assault is not sufficient, in the State party's opinion, to entitle her to protection against being returned. Given that no essential new information or views have come to light during the proceedings before the Committee since the original Board hearing was conducted on 19 July 2013, the State party finds that the author's allegations regarding the risk of harassment are not sufficiently substantiated.

4.20 The State party submits that the violations of the Convention that the author is claiming will take place if she is returned to India appear unclear and insufficiently substantiated. The author refers to several articles of the Convention but does not describe in detail how they may be considered relevant in the present case. For example, she states that returning her to India would violate article 12, which deals with the elimination of discrimination against women in the field of health care, but

no further reasons are given. In the view of the State party, that provision is completely irrelevant to the present case.

4.21 For the reasons mentioned above, the State party contends that the author has failed to substantiate sufficiently, for purposes of admissibility, the claim that her removal to India would expose her to a real, personal and foreseeable risk of serious forms of gender-based violence. Furthermore, the violations of the Convention that she is claiming would happen were she returned to India appear unclear and insufficiently substantiated. For those reasons, the communication should be declared inadmissible under article 4 (2) (c) of the Optional Protocol as being manifestly ill-founded and unsubstantiated.

4.22 The State party submits, pursuant to article 4 (2) (b) of the Optional Protocol, that the present communication is incompatible with the provisions of the Convention. The State party also submits that the positive duties under article 2 (d) do not encompass an obligation for States parties to refrain from expelling a person who might risk pain or suffering inflicted by a private person, without the consent or acquiescence of the relevant State. This limitation has been established by, among others, the Committee against Torture in its decision in *V.X.N. and H.N. v. Sweden*.[5] In support of this point, the State party observes that the author stated during the second interview with the Danish Immigration Service, on 4 March 2013, that she had not contacted any local or higher authorities in India to seek protection. Concerning the reason for not complaining to the higher authorities, she stated that she was unable to leave the house without her family keeping an eye on her. Confronted with her statement about being able to leave her home to apply for a residence permit for Denmark and to meet a friend, she stated that she would not have been able to complain to any higher authorities because she did not have a lot of money.

4.23 Lastly, the State party observes that India has signed and ratified the Convention and is thus bound to comply with its provisions.

Author's comments on the State party's observations

5.1 On 23 December 2013, the author submitted that the present communication fully satisfied the admissibility requirements under the Convention. The State party's obligations under the Convention require it to refrain from expelling women who are at risk of real, personal and foreseeable serious gender-based violence in the country of origin. As it emanates from the Committee's decision in paragraphs 8.3 to 8.10 of communication No. 33/2011, as well as communication No. 35/2011,[6] the present communication should be considered admissible as well.

5.2 The State party, however, appears to argue that she has not demonstrated a case of gender violence and, therefore, that the communication is insufficiently substantiated. The author submits that she has been able to demonstrate a prima facie case of gender discrimination and gender violence. Repressions against women in that part of the world (India and Pakistan) are widespread, especially because of her choice with regard to her husband.

[5] Communications Nos. 130/1999 and 131/1999, *V.X.N. and H.N. v. Sweden*, views adopted on 15 May 2000, para. 13.8.

[6] Communication No. 35/2011, *M.E.N v. Denmark*, decision of inadmissibility adopted on 26 July 2013.

5.3 That men are not restricted in their choice of spouses or, rather, not punished for their choice, shows a pattern of discrimination against women. While the majority of the State party's Refugee Appeals Board does not support the finding that there is a risk of "honour" killing if the author is returned home, there are indications that the Board supports this notion indirectly by proposing an "internal flight" alternative within India. As stated by the minority members of the Board, they can accept the applicant's statement about her conflict with her family. Nevertheless, they also find that she would be able to take up residence elsewhere in India.

5.4 The author submits that the internal flight option is not viable, given that she has to report to the police at the location where she decides to take up residence, and the police would inform her parents of her whereabouts. She wonders to what extent women should be obliged to seek protection against real, personal and foreseeable serious gender-based violence in other parts of the country of origin, rather than seeking protection abroad.

5.5 Regarding the State party's arguments concerning article 12 of the Convention, the author notes that the health of women is directly related to the issue of gender-based violence. This is also noted in the State party's most recent periodic report to the Committee.

State party's further observations

6.1 On 13 February 2014, the State party submitted further observations. It observed that the author had still failed to substantiate a real, personal and foreseeable risk of persecution were she returned home. With regard to her comments on the Board's decision, the State party submitted that, while one part of the majority had accepted her statements regarding her conflict with her family, the Board had not specified any reasons for which she would qualify for protection. It was therefore impossible to conclude whether the Board attached any importance to the alleged risk of "honour" killing.

6.2 The State party therefore reiterates its position that the communication should be considered inadmissible as manifestly ill-founded, or insufficiently substantiated. The present communication is further inadmissible because the author failed to substantiate the contention that the national authorities would not be able to obviate the alleged risk by providing appropriate remedies. Should the Committee find the communication admissible, the State party contends, as stated in its previous submissions, that the author has not sufficiently established that her rights under the Convention would be violated were she sent home.

Further submissions by the author

7.1 On 9 November 2014, the author indicates that, in February 2014, the couple was granted an authorization by the mayor of the city where they lived to marry in Denmark, which, according to her, increases the risk of gender-based violence were she returned to India. She adds that, on 27 July 2014, she gave birth to a boy, which, in her view, has exacerbated the situation, because she is now the mother of a child fathered by a person from a different religion, and the family would now also target the child. The birth would warrant retaliation from her family.

7.2 The author further submits that the general situation regarding gender-based violence is not improving in India. On 9 October 2014, the *Times of India* reported that the practice of devadasi still existed. Relationships among lower and upper castes were still not allowed and could even lead to murder. Articles in the *Times of India* of 30 April and 20 July 2014 pertained to such incidents. Consequently, the author argues that the risk of family-related violence is very real for her, if returned to India.

7.3 The author also submits that the Board members disagreed about their decision. The minority of the Board decided that she needed protection and should not be expelled to India. One part of majority agreed with her arguments, but stated that she could take up alternative residence in India. The State party dismisses those facts and considers the conflict private in nature. The author contends that she has already proved the real nature of the risk that she faces if returned.

7.4 The author reiterates that, according to the laws in India, she must report to a police station if she decides to relocate to any other town. She will be registered there, and her parents will be able to find out where she lives. The author submits that the State party should take seriously the principle of non-refoulement with respect to women who are in fear of gender-specific violence.

Issues and proceedings before the Committee concerning admissibility

8.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol.

8.2 The Committee takes note of the author's claims that her deportation to India would constitute a violation by Denmark of articles 1, 2 (c) and (d), 3, 12, 15 and 16 of the Convention. The Committee also takes note of the State party's argument that the communication should be declared inadmissible as manifestly ill-founded and unsubstantiated, as well as incompatible with the provisions of the Convention. The Committee further takes note of the State party's reference to the Committee's jurisprudence that the Convention can have an extraterritorial effect only when the women being returned will be exposed to a real, personal and foreseeable risk of serious form of gender-based violence.

8.3 The first issue that needs to be addressed by the Committee is whether it is competent under the Convention to consider the present communication, involving the deportation of the author from Denmark to India, where she claims she would be exposed to gender-based violence, a form of treatment prohibited by the Convention. The Committee would need to determine whether, by deporting the author to India, the State party's responsibility would be engaged under the Convention for the consequences of such deportation, even though they would occur outside its territory.

8.4 The Committee recalls that, in paragraph 12 of its general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, it emphasized that the obligations of States parties applied without discrimination both to citizens and non-citizens, including refugees, asylum seekers, migrant workers and stateless persons, within their territory or effective control, even if not situated within the territory. The Committee indicated that States parties were responsible for all their actions affecting human rights, regardless of whether the affected persons were on their territories.

8.5 The Committee recalls that article 1 of the Convention defines discrimination against women as any distinction, exclusion or restriction made on the basis of sex that has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. The Committee also recalls its general recommendation No. 19, by which it has clearly placed violence against women within the ambit of discrimination against women by stating that gender-based violence is a form of discrimination against women and includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. The Committee further recalls that it has also determined that such gender-based violence impaired or nullified the enjoyment by women of a number of human rights and fundamental freedoms, including the right to life, the right not to be subjected to torture or to cruel, inhuman, degrading treatment or punishment, the right to liberty and security of the person and the right to equal protection under the law.

8.6 The Committee notes that, under international human rights law, the principle of non-refoulement imposes a duty on States to refrain from returning a person to a jurisdiction in which he or she may face serious violations of human rights, notably arbitrary deprivation of life or torture or other cruel, inhuman or degrading treatment or punishment. The principle of non-refoulement also constitutes an essential component of asylum and international refugee protection.[7] The essence of the principle is that a State may not oblige a person to return to a territory in which he or she may be exposed to persecution, including gender-related forms and grounds of persecution. Gender-related forms of persecution are forms of persecution that are directed against a woman because of her sex or that affect women disproportionately.

8.7 The Committee recalls that, under article 2 (d) of the Convention, States parties undertake to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with that obligation. This positive duty encompasses the obligation of States parties to protect women from being exposed to a real, personal and foreseeable risk of serious forms of gender-based violence, irrespective of whether such consequences take place outside the territorial boundaries of the sending State party. If a State party takes a decision relating to a person within its jurisdiction, the necessary and foreseeable consequence of which is that that person's rights under the Convention will be violated in another jurisdiction, then the State party itself may be in violation of the Convention. For example, a State party would itself be in violation of the Convention if it sent back a person to another State in circumstances in which it was foreseeable that serious gender-based violence would occur. The foreseeability of the consequence would mean that there was a present violation by the State party, even though the consequence would not occur until later. What amounts to serious forms of gender-based violence will depend on the circumstances of each case and would need to be determined by the Committee on a case-by-case basis at the merits stage, provided that the author had made a prima facie case before the Committee by sufficiently substantiating such allegations.[8]

[7] See the 1951 Convention relating to the Status of Refugees, art. 33 on the prohibition of expulsion or return ("refoulement").

[8] See *M.N.N. v. Denmark* (note 3 above), para. 8.10.

8.8 The Committee takes note of the author's claim that she fears being subjected to gender-based violence by members of her own family if she is returned to India and that the authorities in India will not protect her against such acts. The Committee also notes that the State party's authorities rejected her claim that the authorities in India would be unwilling or unable to protect her from attacks by her family members, taking into consideration that she admittedly never complained to the authorities or attempted to seek any kind of protection while in India. The Committee observes that, while the author disagrees with the factual conclusions of the State party's asylum authorities, she has never attempted to seek protection from the authorities in her home country and has presented no prima facie evidence that they were or would have been unable or unwilling to provide her with protection against the alleged attacks by the members of her family. The Committee further notes that the author also failed to file any complaints with the police regarding the alleged attacks that she suffered at the hands of her family members.

8.9 The Committee further observes the author's contention that there is a risk that she would be the victim of an "honour" killing by her family members were she returned home. Taking into account the State party's argument that she could relocate to some other part of India, the Committee also notes that the author has not provided any detailed information regarding death threats that she allegedly received from her family members. While the Committee in its concluding observations on the combined fourth and fifth periodic reports of India[9] noted the persistence of harmful traditional practices, the author has not been able to show that she would personally be at risk of such actions, especially by the members of her family. In these circumstances, and in the absence of any other pertinent information on file, the Committee considers that the author has failed to substantiate sufficiently, for purposes of admissibility, the claim that her removal from Denmark to India would expose her to a real, personal and foreseeable risk of serious form of gender-based violence. The Committee notes that, under article 4 (2) (c) of the Optional Protocol, it must declare a communication inadmissible where it is not sufficiently substantiated. Accordingly, the Committee concludes that the present communication is inadmissible under article 4 (2) (c) of the Optional Protocol.

9. The Committee therefore decides:

(a) That, in accordance with article 4 (2) (c) of the Optional Protocol, the communication is inadmissible;

(b) That this decision shall be communicated to the State party and to the author.

[9] CEDAW/C/IND/CO/4-5, para. 20.